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ABSTRACT

Institutions are pervasive phenomena in that they prescribe the boundaries for what individuals can do on a day-to-day basis. The office of ombudsperson has been created in many universities and political units in order to minimize the degree of conflict between individual goals and those of the institution. Three roles for ombudspersons exist: the interpersonal role, which consists of counseling individuals on realities of living such as the importance of clear communication; the due-process role, which involves ensuring the functioning of the institution; and the "change of policy" role, which entails calling attention to the laws and practices that repeatedly cause unjust or improperly discriminatory results. The office of ombudsperson can bring about change because it is independent and powerless, with no inherent stake in outcomes, and because justice is a universally acceptable and desired norm. Although the ombudsperson's work for reform necessarily takes place in the interstices of the institution, it can ensure that the institution's own functions coexist with the creative and self-fulfilling lives of its individual participants. (CC)

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BRINGING INSTITUTIONS DOWN: THE "PERSUASIVE" CAPABILITIES OF YOUR FRIENDLY OMBUDSMAN

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BRINGING INSTITUTIONS DOWN: THE "PERSUASIVE" CAPABILITY OF YOUR FRIENDLY OMBUDSMAN

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BRINGING INSTITUTIONS DOWN: THE "PERSUASIVE" CAPABILITY OF YOUR FRIENDLY OMBUDSMAN

I. INTRODUCTION

The purpose of these remarks

Each of us participate in those elusive phenomena social scientists call institutions. We bring to these institutions our personal values, lifestyles, and desires to be looked upon as whole human beings. Though institutions are not animate objects, they are pervasive phenomenon in that they proscribe the boundaries for the things that we as individuals can do on a day-to-day basis. Sometimes, indeed often, the institution and the individual are in conflict. My remarks in this paper will be addressed to an attempt of one of society's expressions of an institution, a university, to minimize the degree of conflict between individual goals, objectives and happiness, and the stifling and non-creative potentials of institutional life.

A methodological caveat. The office within the university which I shall describe is that of the University Ombudsman. I wish I could share with you a very detailed and quantitative summary of the cases which come before the Office. I cannot. The office, like so many other human events, is difficult (though ultimately not impossible) to quantify. I can tell you, for example, that the office handles about 800 cases each year. One of those cases was a request from a student for help because

the landlord of their apartment lived in the lower portion of the house, controlled the one thermostat, and refused to turn it up so the temperature in the apartment was only 57°. It took me less than five minutes to get the information, indicate I did not know the solution, but that I'd be back in touch with her that afternoon. Our Office's administrative aide remembered that some years before we had had a similar request and the search for the solution had found a wing of public government responsible for just that sort of problem. It took her less than five minutes to return the call and give the information. That case took less than 15 minutes, including typing the case summary for the files. In contrast, a particularly complex tenure case on which I've been working has taken some 50 hours of work. Yet, the two cases will go in our statistical report as one item each. Now, I am well aware that under some circumstances those events could be weighted, but it better serves my purpose today to deal with the quality of the problems which an office such as ours faces within an institution rather than with the variations of solutions.

The main theme

The institutions in which we all participate need constant correction. To a degree, correction of interpersonal wrongs comes from the good judgment and justice that is supposed to govern all our relationships. Insofar as that justice does not occur (from authoritarian management that does not hear its subjects or from the predominance of individual self-interest) an independent office charged with assuring due process can "bring

the institution down" to the point where its own functions are being fulfilled and to the point where individual participants are more creative and living self-fulfilling lives.

II. BRIEF REMARKS ON TERMS

The strange foreign term--Ombudsman

The term itself has its roots some five centuries back in Swedish history. The office created under the title "ombudsman" dates back to 1809 in Sweden. Formally, this original ombudsman is a legislative commissioner for the investigation of citizen's complaints of bureaucratic abuse. It is now common enough so that it is found in all the Scandinavian countries and a large number of other countries.* When established on a national level the ombudsman serves three related purposes. The office may assist in redressing individual grievances; it may help in improving the quality of administration; and because in its annual reports it can call attention to laws that produce "unreasonable, unjust, oppressive, or improperly discriminatory results," it can assist legislators in carrying out supervisory functions (Anderson, 1973:961).

Obviously, the role of "people's watchdog against abuse of power" (as Henry Abraham, 1960, so aptly described it) need not be limited to national governments. Many other levels of government, as well as private and quasi-private institutions, have discovered the usefulness of an office such as this (Rowat, 1968). Thus, currently we have four states of the U.S., most of the provinces of Canada, as well as many other similar government organizations

*By 1977 there were ombudsmen in 17 national governments and 24 states or provinces (Bricker, 1975, p. 16).

around the world instituting and using the office. In addition, some city, county or city-county combined governments have used the office (e.g. Meyer, 1977). And finally, since the late 1960's, the use of the office has spread to a hundred colleges and universities in the U.S.*

Obviously, the office of the ombudsman would not be the same in all of these different institutional settings. I will not review the role of the office of the ombudsman in all these variations. Therefore, I am limiting my comments to a case in which I am currently participating.

The strange English term--institution

I've already commented that institutions are not animate beings. Institutions are, however, more than a collectivity of individuals. If they were only that, they would change dramatically every time a different person took a different job. There are functions to perform under the auspices of that institution: students to teach, heat to get into the classrooms, walls to be painted, records to be xeroxed, books to be catalogued (and sometimes read), etc. Since these functions must occur, a continuity, over time, is achieved through such things as job descriptions, work assignments that are similar year after year, and all the other means with which each of us is so familiar.

But it is precisely this drive toward continuity that makes the institution a sometimes dangerous place for creative individuals. People can insist on requirements simply because they are requirements, not because they have any meaning or function for anyone involved.

*It is a recent movement. There were none on campuses in 1965. By 1970, there were 61 and in 1977, 100 (Hannah, 1977).

The place for the person

Finding and assuring a place for the creative individual in a setting is not easy. Our society is supposed to encourage a high degree of individual freedom. We proscribe in our constitution due process in case a complaint is made against us. But we all know that laws and courts extend down into our daily lives infrequently. Therefore, the procedures of fair treatment--treatment which is supposed to achieve two things: the goal of the institution and the fulfillment of the life of the individual--are sometimes difficult to assure.

III. ROLES OF THE INDEPENDENT OFFICE IN THE PROCESSES OF CHANGE

Now let me turn to some observations in consideration of the particular case of university ombudsman. Admittedly, the particular roles vary from one institution to another, depending on the way in which the office has been established and upon the way the occupant of the office interprets his duties. Nevertheless, I suspect there are some commonalities that would apply wherever the office functions. The following observations arise from our own experience.

The interpersonal role--counselor on the realities of living

Sometimes people have no problem, at least no problem which is attributable to the structures of the organizations and institutions in the world around them. A good many of our student complaints regarding grades or, more vaguely, their "treatment" by their professor, are a result of an unwillingness to face up to the processes of evaluation which are inherent in all learning

situations. A low score on a test can be interpreted as a denunciation of the value of life itself. Merely raising a complaint does not make it automatically valid. Of course, a complaint can also easily arise from a lack of communication regarding grading standards, course expectations or, in the case of staff, job expectations of the individual. Often, what needs to occur is an initial investigation to find out what the situation was and then a long discussion over the significance of communication in the work setting or in the classroom. Despite their prized autonomy and independence, professors (and work supervisors) are not automatically clear in their work assignments, correct in their impressions of what ought to be accomplished, etc.

Before becoming university ombudsman myself, I was amazed in reading reports and studies of the office of the ombudsman in many other institutions of the number of complaints that were dismissed immediately after the initial inquiry. Over a 10-year period (1962-1973) the Office of the Ombudsman in New Zealand either dismissed as not justified or declined 69.5% of 8,582 cases. This does not seem particularly atypical (Hill, 1973). And it is true in our office also, that some complaints do not go beyond the initial discussion. I do not feel badly about that, nor do I apologize for it. I think it is, on the one hand, a reflection of the vast variations in our individual behaviors and understandings and, on the other hand, a product of the inherent opaqueness with which communication takes place within the institution.

A Case Illustration: A student came to the office to complain about a D+ grade he had received. His understanding had been that of the five quizzes given during the term, the grade of the lowest would be dropped and the other four averaged for the course grade. With scores--in order of the quizzes--of 89, 73, 65, 59 and 59, that would have given a C+ average. However, when he contacted the instructor, he learned the grading system had been to drop the lowest grade, substitute the second lowest grade and then average by five. Since his two lowest grades were identical, his average was D+. All of that seemed straightforward enough so our only response was "you blew it."

A Case Illustration: Others have complained about the style of leadership of their supervisors: e.g., sending memos to specify the days tasks, a particularly brusk pattern of communication. Obviously, if the "style" of management leads to unfairness in treatment we become concerned. If it is no more than a method of communication, we have to convince the individual that he or she too must be flexible.

<u>The due process role--insurance that the functions of the institution function</u>

Despite the comments I've just made, it is also true that there are numerous bonafide grievances that individuals may have. A professor, possibly for good reason, thinks an individual has been cheating. But the professor may be wrong, and if the student actually has not been cheating, there should be a way for the student to protect him/herself from an improper allegation. Enough

cases such as that have occurred so that, at least at our university, we have a relatively good procedure, one involving an unbiased third party, where the charges can be made but also where a defense can be given. And in addition, that outcome can be appealed. The same is true with practically every kind of complaint that one could imagine in the university setting.* I have noticed a remarkable sense of detachment among persons who are responsible for hearing grievances of other parties. There seems to be a recognition, at least among many, that errors can be made, that people can approach essentially the same events from very different points of view, and that therefore a person who feels him or herself personally harmed by a particular decision ought to be heard so that there is a potential that the decision may be reversed or modified. That remark has to be tempered by the reality that supervisors (or administrators) occasionally develop a high personal stake in decisions they have made. Our office, however, has been very pleased with the extent to which these same supervisors have been willing to listen, modify and sometimes change a difficult decision.

A Case Illustration: One student came to the office very disturbed that his TA had given him an F on his last two essays because he had used language that could not possibly have been his own. She suggested they were A papers while he was doing B

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*Some of you probably know that the motto of Cornell University was established by its founder, Ezra Cornell. He said, and we are reminded of this on the university logo, "I would found an institution where any person can find instruction in any study." One of my predecessors has suggested that this motto ought to be modified to read, "I would found an institution where any person can grieve on any subject" (Greisen, 1977).

work. Initially the instructor had supported the TA. He was adamant that they were his work and that he could even prove it with a witness who saw him writing them. We contacted the instructor in the course. The formal procedures were used where the student presented his arguments and a third party was present. On careful review, the instructor (and another reader) agreed with the student there was no proof of plagiarism and therefore awarded the grade.

I'm reminded of that classical story of the professor who assigned a term paper in his course. He had the TA read and grade all papers while he spot checked the grading by reading every third paper. The first sentence of one struck him as familiar. On reading more, he recognized the paper as one of his own articles he had published in a journal. The student had copied the paper, verbatim, only changing the name of the author. The professor was furious. However, he was even more upset when he reached the last page and discovered that the TA had assigned the student a C grade!

"The change of policy" role--changing the reasons for which actions occur

Earlier I mentioned that national ombudsmen play a role of assistance to legislative supervision. I said that in their reports they can often call attention to laws producing "unreasonable, unjust, oppressive or improperly discriminatory results." Eight years ago, when our office began, there were no common university regulations for the review of tenure decisions. In fact, there was even variation among departments

within colleges. The standards of evaluation involved in tenure have been more and more clearly specified as the years have gone by. It isn't that tenure decisions are any easier now than they were ten years ago, but at least there is an attempt to assure that some of the same processes will have occurred in each of those decisions. Graduate students will have been heard from, undergraduate students will have had a voice, colleagues will have reviewed all the individual's publications, contributions to public service will have been documented, and more recently, the rules governing affirmative action will have been legally met. (But will they? Not always. It is just because all the "required" events which assure a degree of fairness do not occur that offices such as those of the ombudsman exist.)

It was only 40 years ago (within some of our lifetimes) that a particularly authoritarian university president in a western university is said to have assigned salary increases on the basis of his walks around campus at night and his subsequent records of which professor's offices had lights burning. There may still be exceptions in some institutions, but the grossness of that form of decision is now much more difficult.

Our office has processed nearly two hundred complaints from students this last year regarding the university's procedure for assuring that every student has access to health insurance. We, as many other institutions, automatically insure every student. However, this is not free, and so on the individual's first semester's bill there appears a charge for insurance. He or she can get out of paying that, as some 8,000 of our 16,000 students do, by signing a waiver. It's a conscious, specific act that says

the student does not want the insurance. (In the vast majority of cases, of course, it is refused because he or she is already insured on a parent's policy.) But, invariably, mails are delayed or not delivered, or the student or his parents do not read that little notice that comes with the first bill that that waiver is necessary, and numerous students, long past the deadline date for submitting the waiver of insurance, come to our office for redress. At our request, the university has paid for over a hundred policies and the insurance company has canceled its non-cancelable policy for several thousand students. Currently, we're asking the university's legal department for an opinion on whether we provide sufficient notice. My hunch is they're going to say it's one of those questions in a no-man's land where it is impossible to say that it is either right or wrong according to law. If that is the case, we are then prepared to try and make other changes in the enrollment process to better assure that everyone does formally make the decision to insure or not to insure.

IV. SPECULATION ON WHY CHANGE FROM A POWERLESS SOURCE IS POSSIBLE

The office is independent

Now in its ninth year of operation, the office has developed a history of autonomy within the institution. Some 7,000 complaints have been handled by the office. Though not everyone in the institution is even yet aware of its presence or of its use, word of its functions and its willingness to bypass chains of command to get information or to get decisions made seems to be fairly well known. The charge to the office specifies that it shall report to the community. That is the ground on which the independence most assuredly lies.

The office has no inherent stake in outcomes

Particularly when institutional change is the issue, it is fairly clear that the office has the ability to act autonomously. When a student makes a complaint, the office can go to the professor against whom the complaint is waged, not with any initial threat, but seeking information. We do not make the decisions so whether the decision is changed or not has no immediate reflection on our office. In many cases clients have been appreciative of our services and help even when we have failed to achieve what they felt ought to be achieved.

The office is powerless

A related point concerns an element that is clearly stated in our charter. We have no power to force anyone to do anything, with the exception of one activity that relates not to the decision but to the process. We do have access to files and information. Therefore, we can investigate in any office so long as we have the permission of the individual whose files are being opened to us. We can make recommendations regarding solutions to problems but they remain as recommendations. Nonetheless, there is a power in reasoned, informed persuasion, and maybe even a phenomenon beyond persuasion, which rests in the office's inherent presence in the institution. One day I was in a meeting and was unable to return a phone call from a university employee. An hour later, I returned the call only to learn the following: he stated that at that time, September, he had not received a paycheck since June. He had been inquiring about it week after week and no one seemed to be able to find where the problem was. After he had placed his

call to our office, which I was unable to answer, he had told the department secretary he was calling the Office of the Ombudsman for help. She said she would get right on it, and in turn told the payroll office that our office would be involved, and within a half-hour someone found the missing document which had changed budget lines but which had not been plugged into the computer so that a check could be issued. They assured him that he would have his check with his back pay that afternoon. Obviously, that is not persuasion. It is also not a threat of action that is punitive in nature. It is a threat of action that might lead to embarrassment. And possibly that is our strongest source of power.

Justice is an acceptable norm: it is hard to be against human rights

On a still more abstract scale, I suspect that it is true that that very abstract idea that justice shall prevail in the relationship between institutions in our society and our people is a pervasive one. It is hard to be opposed to human rights. We might act or behave in such a way as to deprive our fellow men and women of their basic rights, but even organizations whose goals are radical change will often say they are not opposed to human rights. Merely being charged with assuring due process does not, of course, make the office sacrosanct. We are subject to failures. We too sometimes feel that striking out at the institution is very much like that old analogy of hitting at a punching bag made of marshmallow. Your hand goes in and makes an indentation very easily, but when it's removed it returns to its original shape as if nothing had happened. Nevertheless, it

is a good idea to recognize, to verbalize, to explicate these very abstract values so that it becomes clear that when you fail, you've failed from achieving an object that was worthwhile.

V. DID WE BRING THE INSTITUTION DOWN?

The topic that was assigned to me, that is bringing the institutions down, seems to be slightly overstated. Possibly some of you have different ideas of what an institution is, but I hope I've made it clear that I think it's a phenomenon that is part and parcel a product of human existence. The way I've described it, it could be a pattern of behavior, a pattern of living, that is as characteristic of the most primitive tribal culture as it is of the modern nation-state. Possibly the phrase needs an additional clause. Do we bring the institution <u>down</u> to a tolerable level of human existence? Can we bring the institution <u>down</u> to a point where it can be controlled by the participants within it? The word down then becomes a processual adjective rather than a destructive verb. One not so minor qualification ought to be included in a set of comments such as these. Ascher (1967: 176) makes the point: "As Oliver Wendell Holmes once said of the judge, the ombudsman's work for reform is molecular, not molar; it is interstitial." I often feel that our office has the same relationship and limitations to reality as the case study method does in science. That is, in dealing with the particular one has to continually force consideration of the general. Some (e.g., Gellhorn, 1966; and Gwynn, 1973) have felt national offices have little impact on law reform. I can understand that. Admittedly, that creates a

different sense in which a discussion such as this takes place, but I think it also expresses a reality concerning life itself.

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